

Decision 04-01-049 January 22, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.

Application 00-11-038
(Filed November 16, 2000)

Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)

Application 00-11-056
(Filed November 22, 2000)

Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.

Application 00-10-028
(Filed October 17, 2000)

**OPINION REGARDING WESTERN AREA
POWER ADMINISTRATION INTEREST**

Background and Discussion

In Decision (D.) 03-09-017, Pacific Gas and Electric Company (PG&E) was ordered to remit to the California Department of Water Resources (DWR) the Commission-approved power charge for all of the energy that DWR supplied to meet PG&E's retail load, but which was purportedly used to serve PG&E's load obligations with the Western Area Power Administration (WAPA). Ordering Paragraph 2 of D.03-09-017 directed PG&E to have its shareholders pay interest on the power charge remittance. PG&E was also directed to discuss the interest issue with DWR to determine the appropriate amount of interest that should be paid by PG&E's shareholders to DWR. Ordering Paragraph 2 also provides that

after receiving the notice of the efforts to resolve the WAPA interest issue, a “draft decision shall be prepared for the Commission’s action determining the appropriate amount of interest to be paid.”

In accordance with Ordering Paragraph 2.b. of D.03-09-017, PG&E filed its “Notice Regarding WAPA Interest Issue” on October 20, 2003. In that notice, PG&E stated that it had reached agreement with DWR on the amount of interest to be paid, and that the amount is \$13,148,307.02. On October 29, 2003, PG&E filed a “Supplemental Notice Regarding WAPA Interest Issue.” The supplemental notice stated that the original notice did not correctly set out the agreed upon interest amount. PG&E states that the correct amount is \$13,316,623.77.

The agreed upon interest amount is based on “the monthly weighted average interest rate PG&E earned on short term investments during the period between when it would have made specific remittances to DWR had the remittance rules adopted by D.03-09-017 been in place initially, and when PG&E actually made the WAPA true up remittance pursuant to D.03-09-017 and D.03-09-018.” (Supplemental Notice, p. 2.)

The supplemental notice also states that “PG&E has agreed with DWR to provide the interest amount to DWR within 5 days after a Commission action authorizing PG&E to do so, and has agreed that the penalty provisions of the servicing order would apply if PG&E does not provide the amount to DWR within that time.” (Supplemental Notice, p. 2.) The supplemental notice also states that if the Commission decides on some other date for remitting the WAPA interest amount, that would supercede the payment timing agreement between PG&E and DWR.

In D.03-09-017, we allowed PG&E and DWR “to determine the appropriate amount of interest that should be paid by PG&E’s shareholders for PG&E’s untimely remittances associated with the WAPA load, subject to Commission approval.” (D.03-09-017, p. 31.) The decision also noted that the servicing order contains specific provisions that address when interest is due.

In the opening and reply comments to the draft decision of Administrative Law Judge (ALJ) John S. Wong, which was mailed on December 9, 2003, San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE) contend that the interest amount that PG&E’s shareholders should pay to DWR should represent the actual financing costs that DWR incurred as a result of PG&E’s failure to timely pay its WAPA-related remittances. SCE estimates this cost at approximately \$38 million, which is based on a weighted-average interest rate of 4.8% on the bonds that DWR issued, in part, to finance PG&E’s obligations. SCE asserts that this is the relevant interest rate to consider because it takes into account DWR’s borrowing costs to finance PG&E’s delinquent payments. In its reply comments on the ALJ’s draft decision, The Utility Reform Network supports the position of SCE and SDG&E.

In DWR’s January 5, 2004 reply comments to the ALJ’s draft decision, DWR acknowledges that “it did in fact finance PG&E under-remittances with revenue bonds.” (DWR Memorandum, Jan. 5, 2004, p. 1; See Vol. 51 R.T. 7027-7031.) Additionally, in DWR’s Memorandum dated April 17, 2003 regarding the WAPA under-remittances, DWR stated:

“In its comments, PG&E appears to argue that there are no adverse consequences resulting from past under-remittance. PG&E asserts that DWR did not finance the under remittance associated with PG&E’s wholesale obligations for 2001 and 2002. PG&E is wrong. The under-remittance associated with

energy deliveries to PG&E's service territory in 2001 and 2002 (up to the date of bond issuance) were effectively financed by the Department. As a result, ratepayers in SCE and SDG&E's service territories are also shouldering the burden caused by PG&E's past under remittances." (DWR Memorandum, April 17, 2003, p. 2.)

DWR's January 5, 2004 Memorandum also states that the approach favored by SCE and SDG&E, or the approach in the ALJ's draft decision, "would result in a reasonable outcome," and that "DWR has no preference among the proposals."

PG&E opposes the approach taken by SCE and SDG&E. PG&E asserts that the WAPA true up amount of approximately \$500 million was not used to buy back DWR bonds, but instead was used to help fund the \$1 billion in bill credit authorized in D.03-09-018. Since the true up amount was used to fund the bill credit, PG&E contends the appropriate interest rate is the short-term interest rate that DWR would have received had PG&E remitted the funds earlier. Further, in comments on the Alternate Draft Decision, PG&E re-argues its position taken prior to D.03-09-017 that it has at all times been in compliance with previous Commission decisions regarding payments to DWR. PG&E goes on to mischaracterize any interest amount greater than \$13,316,623.77 as a civil penalty imposed by this Commission.

Although the interest amount of \$13,316,623.77 has been agreed to by both DWR and PG&E, we do not believe that this amount adequately compensates ratepayers for PG&E's delinquent payments. We further disagree with PG&E that our adoption of a higher interest than that agreed upon amount between DWR and PG&E represents a civil penalty. Including financing costs in our definition of "interest" in this instance represents an appropriate allocation of the

real costs associated with the delays in this transaction and it avoids burdening ratepayers from other utility service territories with costs not reasonably associated with their use and concomitant benefit. As such, this does not constitute a civil penalty. DWR has repeatedly acknowledged that it had to issue additional revenue bonds to make up for PG&E's under-remittances. The issue before us is not how much interest earnings PG&E made by withholding WAPA payments from DWR. The issue before us is to fully compensate DWR customers for the financing costs they incurred during the period when PG&E's WAPA obligations were incurred and when they were ultimately paid to DWR. Since the interest rate of the bonds exceeds the short term interest rate that DWR and PG&E have agreed to, it is only fair to have PG&E's shareholders pay DWR interest of \$38 million for the untimely remittances associated with the DWR energy used to serve WAPA load.¹ As such, the adopted higher interest amount does not constitute a civil penalty. PG&E's shareholders shall be responsible for the WAPA interest amount, and PG&E shall remit the amount of \$38 million to DWR within 20 days from today's date.

Comments on Alternate Draft Decision

The alternate draft decision of Commissioner Wood was mailed to the parties on January 8, 2004, in accordance with Public Utilities Code Section 311(g)(1) and Rules 77.6(d) and 77.7 of the Rules of Practice and Procedure. Comments were filed on January 15, 2004, by PG&E, SCE, and SDG&E. Reply comments were filed on January 20, 2004, by SCE.

¹ If PG&E or DWR can demonstrate that the actual financing costs associated with the bonds to cover the under-remittances is less than \$38 million, we will entertain a reduction in the amount of interest that should be paid.

We have carefully considered the comments on the alternate draft decision and incorporated changes herein.

Assignment of Proceeding

Loretta M. Lynch and Geoffrey F. Brown are the Assigned Commissioners, and John S. Wong is the assigned ALJ in this proceeding.

Findings of Fact

1. D.03-09-017 directed PG&E to have its shareholders pay interest on the power charge remittance owed to DWR, and directed PG&E to discuss the interest issue with DWR to determine the appropriate amount of interest that should be paid.

2. PG&E's supplemental notice states that PG&E and DWR have agreed that the WAPA interest amount is \$13,316,623.77.

3. The WAPA interest amount is based on the monthly weighted average interest rate PG&E earned on short-term investments during the period between when it would have made specific remittances to DWR had the remittance rules adopted by D.03-09-017 been in place initially, and when PG&E actually made the WAPA true up remittance pursuant to D.03-09-017 and D.03-09-018.

4. PG&E has agreed with DWR to pay the interest amount to DWR within five days after a Commission action authorizing PG&E to do so, and if no payment is made, that the penalty provisions of the servicing order will apply.

5. In their opening and reply comments to the ALJ's draft decision, SDG&E and SCE assert that PG&E should pay a higher amount to DWR due to the actual financing costs that DWR incurred.

6. DWR acknowledges that it financed PG&E's under-remittances with revenue bonds, and as a result, the ratepayers in the service territories of SCE

and SDG&E are also shouldering the burden caused by PG&E's past under-remittances.

7. DWR has no preference as to the amount of interest that PG&E should pay, and that the approach favored by PG&E, and the approach favored by SDG&E and SCE, would result in a reasonable outcome.

Conclusions of Law

1. The WAPA interest amount of \$38 million should be approved.
2. PG&E should be directed to remit the amount of \$38 million to DWR within 20 days from today's date.

O R D E R

IT IS ORDERED that:

1. The interest amount of \$38 million, which represents the amount of interest owed on the under-remittance associated with the California Department of Water Resources (DWR) energy used to serve Pacific Gas and Electric Company's (PG&E) contractual obligation with the Western Area Power Administration, is approved.

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2. The shareholders of PG&E shall be responsible for paying the interest amount of \$38 million to DWR, and PG&E shall remit such sum to DWR within 20 days from today's date.

This order is effective today.

Dated January 22, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA LYNCH
GEOFFREY F. BROWN
SUSAN KENNEDY
Commissioners